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## APPENDIX "A"

# United States Court of Appeals

## UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixth day of June, one thousand nine hundred and seventy-three.

Present: HON. PAUL R. HAYS,
HON. WALTER R. MANSFIELD,
HON. WILLIAM H. MULLIGAN,
*Circuit Judges,*

73-1274

---

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,*

—v.—

AUGUSTE JOSEPH RICORD, a/k/a ANDRE RICOR a/k/a MONSIEUR ANDRE, CESAR BIANCHI, JULIO RODRIGUEZ, JUAN DE DIOS RODRIGUEZ-BENITOZ, a/k/a ARON MURAVNIK and ENIO ANIBAL VARELA-SEGOVIA,
*Defendants,*

AUGUSTE JOSEPH RICORD, a/k/a ANDRE RICOR, a/k/a MONSIEUR ANDRE,
*Defendant-Appellant.*

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*Appendix "A"*

**Appeal from the United States District Court for the Southern District of New York.**

**This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.**

**ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.**

**A. DANIEL FUSARO,**
**Clerk.**

# APPENDIX "B"

## UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a stated term of the United States Court of Appeals in and for the Second Circuit held at the United States Court House, in the City of New York on the twenty-eighth day of June, one thousand nine hundred and seventy-three.

Present: HON. PAUL R. HAYS,
HON. WALTER R. MANSFIELD,
HON. WILLIAM H. MULLIGAN,
*Circuit Judges.*

Docket No. 73-1274

UNITED STATES OF AMERICA,
*Plaintff-Appellee,*

—v.—

AUGUSTE JOSEPH RICORD, a/k/a ANDRE RICOR a/k/a MONSIEUR ANDRE, CESAR BIANCHI, JULIO RODRIGUEZ, JUAN DE DIOS RODRIGUEZ-BENITOZ, a/k/a ARON MURAVNIK and ENIO ANIBAL VARELA-SEGOVIA,
*Defendants,*

AUGUSTE JOSEPH RICORD, a/k/a ANDRE RICOR, a/k/a MONSIEUR ANDRE,
*Defendant-Appellant.*

A petition for a rehearing having been filed herein by counsel for the appellant,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

A. DANIEL FUSARO,
Clerk.

# APPENDIX "C"

**(Constitutional Provisions, Statutes and Rules Involved)**
**Fourth Amendment:**

**The Fourth Amendment of the Constitution of the United States provides:**

> **"The right of the people to be secure in their perons, houses, papers and effects, against unreasonable search and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."**

**Fifth Amendment:**

**The Fifth Amendment of the Constitution of the United States provides:**

> **"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."**

**Title 28, United States Code, Section 1254(1)**

**Section 1254. Courts of Appeals; Certiorari; Appeal; Certified Questions.**

> **"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:**

*Appendix "C"*

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

Title 21, United States Code, Section 173

Title 21, United States Code, Section 174

Rule 19, Supreme Court Rules

Rule 19, Considerations governing review on certiorari.

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

"(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

"(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far

departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

"2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari."

Rule 41, Federal Rules of Criminal Practice

## APPENDIX "D"

## Stenographer's Minutes, Dated December 5, 1972

The Court: This concludes the openings, and before we go on to the taking of testimony we will take a five minute recess. Please don't discuss the case in the meantime.

(The jury left the courtroom.)

The Court: At this point the Court is reopening the hearing because I understand that Bianchi is here.

Will he be produced, please.

Mr. Phillips: Your Honor, before we proceed, I see that Mr. Ricord's niece and daughter have entered the courtroom. The trial is under way. So I would ask that the ruling your Honor has already made be invoked and that they be excluded.

The Court: Yes. I sequestered the witnesses, and that is a court order. So each side will have to watch their own witnesses and make sure that they comply with the rules.

Mr. Handman: Let it be noted they just walked in now.

The Court: Nobody is faulting them at this point. I am just saying, make sure that your witnesses are not here during any portion of the trial, except when they are called.

Mr. Handman: Inasmuch as the first thing to be done now is the continuation of the pretrial hearing, is it all right if they remain? They have nothing to do with the testimony of Bianchi.

The Court: I don't see any harm in them being here at this point. All right.

*Appendix "D"*

*Stenographer's Minutes, Dated December 5, 1972*

Where is Bianchi?

The Court: I note the presence of his attorney. I appreciate his coming over here at this point.

As I understand it, Mr. Diller, you have advised with your client and it is his present position that he is going to exercise his Fifth Amendment rights?

Mr. Diller: That is correct, your Honor.

The Court: All right. Now we'll hear it from him, if that is the fact.

Do you speak English, Mr. Bianchi?

Mr. Bianchi: No.

Mr. Phillips: There is a Spanish interpreter here. Secondly, Mr. Diller would like to have an opportunity to talk to him.

Mr. Diller: For thirty seconds.

The Court: Go over to the interpreter and satisfy yourself that the interpreter understands.

Mr. Handman: Can I take this opportunity to approach the bench on a collateral matter with Mr. Phillips? I don't think the stenographer is necessary here.

(Discussion off the record)

*Appendix "D"*
*Stenographer's Minutes, Dated December 5, 1972*

CESAR BIANCHI, called as a witness, being first duly sworn, testified through the interpreter as follows:

Examination by the Court:

Q. You are a defendant in this case? A. I don't know how to answer this question.

Q. Well, you have been charged with a crime, have you not? A. Yes.

Q. And you have a lawyer? A. Yes.

Q. And you have spoken to your lawyer, A. Yes, sir.

Q. Your case is still open, A. I think so.

Q. The lawyer for the defendant Ricord wants to question you. Are you prepared to answer any questions, or are you going to exercise your constitutional privilege to refuse to answer any questions which will incriminate you?

Mr. Handman: Objection. I would think that that would become evident when I ask the question, and I don't think the witness should be instructed as to what he shouldn't do before the questions are put to him.

The Court: Overruled.

A. I take my constitutional right not to answer to any question that might incriminate me.

The Court: All right. That terminates this witness as far as I am concerned.

Mr. Handman: Do I take it then your Honor will not let me put even a single question to this witness?

*Appendix "D"*
*Stenographer's Minutes, Dated December 5, 1972*

The Court: Not a single solitary question. Not even his name. He has indicated to me that he wants to exercise his constitutitonal privilege, and even the giving of his name, or where he is presently staying at, may in some way incriminate him, and he does not desire to give up that right, and I sustain it, and he is excused.

The hearing is closed again, and I will hear your motion, the motion to suppress. I have already indicated prior that I denied the motion, and if there is anything you want to say about that I will hear you, but I don't expect any extended argument at this time.

(Witness excused)

Mr. Handman: Am I correct in that your Honor is not permitting me to call Mr. Boulad to testify on the motion, also? I want to call Mr. Boulad.

The Court: You never made that request of me.

Mr. Handman: Yes, I am sorry, your Honor, I did this morning.

The Court: What's the offer of proof on Boulad?

Mr. Handman: Knowledge concerning the seizure, information leading up to the seizure, knowledge concerning the alleged ownership of the drugs in question.

The Court: I find the ownership to be immaterial, and the other evidence to be cumulative. I deny the request, with an exception to the defendant.

Both sides having been heard, I reiterate the ruling of the Court. The motion to suppress is denied. A memoran-

dum will be filed setting forth findings of facts and conclusions of law.

Mr. Handman: I would just like to state the motion for the record without argument at this time, if your Honor would permit me to do so as far as the suppression.

The Court: Your motion is on file and I have it on paper and it's part of the record of this case.

Mr. Handman: I would simply like to make clear that it's motion to suppress the alleged contraband seized on the 19th of October, 1970, to suppress the alleged contraband seized on the 20th of October, 1970, to suppress any alleged contraband seized directly from Mr. Bianchi in his release or case, and I also move to preclude the government from offering any testimony with regard to the evidence seized on the 20th and from Mr. Bianchi as not being covered within the scope of their disclosure and particulars.

The Court: All the motions are denied. I have previously denied the motions, and I deny them again.

(Bring in the jury)

## APPENDIX "E"

## Motion to Suppress—November 15, 1972

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 72 Cr. 1105

UNITED STATES OF AMERICA

—v.—

AUGUSTE JOSEPH RICORD,
a/k/a ANDRE RICORD, et al.,

*Defendants.*

### MOTION AND MEMORANDUM OF LAW

This and Motion and Memorandum are being submitted as a new Motion for the Suppression of all the heroin referred to in the indictment heren as supplemented by subsequent proceedings including the Bill of Particulars and disclosure. The Government has taken the position unequivocally that such heroin was the property of defendant Ricord.

The discussion of suppression of evidence which took place previously was at a time prior to the Government's Bill of Particulars in which the Government stated its position as to the heroin referred to in this proceeding and affirmed that such heroin was the property of Ricord.

During the previous limited discussion of the matter of suppression, the Court indicated that under *Wong Sun*, defendant Ricord lacked standing to make such a motion.

*Appendix "E"*
*Motion to Suppress—November 15, 1972*

Counsel for the defendant Ricord has made a careful study of the question of standing and particularly the *Wong Sun* case, *Wong Sun* v. *United States,* 371 U.S. 471 9 L.Ed. 2d 441, 83 S. Ct. 407 (1963).

Fortunately for all concerned, the state of the law as to "standing", where there are multiple defendants and conspirators need not be gone into at this point, as the Government's statement that the heroin was Ricord's property has clearly resolved the question of standing so that any standing impediment is no longer present in this case.

In fact, if the seizure of the heroin was illegal as defendant Ricord asserts, then under the *Wong Sun* case any evidence secured as a result of such illegal seizure is "tainted" and cnnot be used in these proceedings.

Under the celebrated doctrine of *Jones* v. *United States,* 362 U.S. 257, 4 L.Ed. 2d 967, 80 S.Ct. 725 (1960), defendant Ricord has the right to contest the legality of the seizure without asserting any ownership of the heroin. It is sufficient that the Government may use such heroin against him at the trial.

While it may seem rather anomalous to the layman, the law seems clear that a defendant, such as Ricord, may contest the legality of a seizure of property the ownership of which he denies, from a person other than himself and at a place other than his house or home.

The Rule under which this Motion to Suppress is made is clear and definite as to who may make it, to wit:

*Appendix "E"*
*Motion to Suppress—November 15, 1972*

**',Federal Rules of Criminal Procedure Rule 41**
**Search and Seizure**

**(e) Motion for Return of Property and To Suppress Evidence.**

> **A person aggrieved by an unlawful search and seizure may move . . . to suppress for the use as evidence anything so obtained on the ground that (1) the property was illegally seized without a warrant, etc. . . ."**

**It would be hard to imagine a case where the words "a person aggrieved" could be more apt.**

**Furthermore, the Constitution of the United States, Fourth Amendment, bears constant repetition:**

> **"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, etc."**

**For the purpose of this motion defendant Ricord must be considered as asserting is own personal rights.**
***United States* v. *Jeffers,* 342 U.S. 48 (1950)**

**Under the foregoing circumstances a full evidentiary hearing is required to determine the circumstances under which the Government secured possession of such heroin and whether such seizure was violative of the rights of defendant Ricord under the laws and Constitution of the United States.**

**What was said by Mr. Justice Frankfurter in *Jones* v. *United States, supra,* pp. 262-264, is much in point here:**

*Appendix "E"*
*Motion to Suppress—November 15, 1972*

"The Government urges us to follow the body of Court of Appeals decisions and to rule that the lower courts, including the courts below, have been right in barring a defendant in a case like this from challenging a search because of his failure, when making the motion to suppress, the allege either that he owned or possessed the property seized or that he had a possessory interest in the premises searched greater than the interest of an 'invitee or guest.'

* * * * *

"The prosecution here thus usbjected the defendant to the penalties meted out to one in lawless possession while refusing him the remedies designed for one in that situation. It is not consonant with the amenities, to put it mildly, of the administration of criminal justice tc sanction such squarely contradictory assertions of power by the government."

There is an excellent discussion of various cases on standing in People v. Smith (Sobel, J.) 230 N.Y.S. (2) 894, Part II.

We submit that as Justice Sobel points out in his brochure, "Current Problems n the Law of Search and Seizure" published in 1964 on p. 135:

"It need only be mentioned that the rule of 'standing' is occasionally confused with the 'primary taint' rule.

* * * * *

"But a *'primary taint'* issue arises whe na defendant objects to the admission of evidence from *him* on the ground that the unreasonable search and seizure from another furnished the probable cause for his arrest and search.

*Appendix "E"*
*Motion to Suppress—November 15, 1972*

> "This of course is not a 'standing issue'. A defendant may complain of *another's* unreasonable search under the "primary taint' doctrine to establish that *his* search was unreasonable. (Wong Sun 1. United States, 371 U.S. 471)."

We submit that, in any case, and particularly the instnt cse, even though the Government must prove other matters, the *Jones* case definitely gives defendant Ricord standing.

In *United States* v. *Wood* [CCA 2d] 270 F. Supp. 963, 966 n. 3 (1967) the Court said:

> "With due respect, we do not think that the principle established by the Jones case is to be read so narrowly. It is 'still squarely contradictory' for the government to charge out of one side of its mouth that the defendant had possession, even though in addition to possession the government must ultimately prove other matters, and to say out of the other that the defendant, as movant, lacked standing, because he did not have possession. Niro v. United States (C.A. 1st) 1968, 388 F.2d 535, 537."

See also:

> *United States ex rel. Coffey* v. *Fay,* (CA 2d (1965) 344 F.2d 625.

An evidentiary hearing is required wherever there are issues of fact necessary to a decision of a motion to suppress as exists in the instant case.

> *Hoffritz* v. *United States,* (CA 2d) (1956) 240 F.2d 109.
>
> *United States* v. *Martin,* (D.C.N.Y. 1959) 176 F. Supp. 409.

*Appendix "E"*
*Motion to Suppress—November 15, 1972*

The case of *Alderman* v. *United States* (1969) 394 U.S. 165, 89 S.Ct. 961, 22 L.Ed. 2d 176, makes it clear that whatever limits the "standing" rule may impose on the movant in a motion to suppress, anyone whose Fourth Amendment rights have been violated has such standing.

We, therefore, respectfully submit that a hearing date be set and defendant Ricord be given the right to subpoena any and all relevant witnesses and evidence to determine the issue of the legality of the seizure of the heroin alleged to be his property.

Dated: New York, New York
November 15, 1972

Respectfully submitted,

HERBERT I. HANDMAN,
*Attorney for Defendant Ricord*
Office and P.O. Address
36 West 44th Street
New York, New York 10036
Tel. (212) YUkon 6-5460

TO: HON. WHITNEY NORTH SEYMOUR, JR.
*United States Attorney, S.D.N.Y.*

## APPENDIX "F"

### Affidavit Opposing Motion to Suppress

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Cr. 1105

UNITED STATES OF AMERICA

—v.—

AUGUSTE JOSEPH RICORD,
a/k/a Andre Ricord.
a/k/a Monsieur Andre, et al..

*Defendants.*

State of New York
County of New York
Southern District of New York ss:

WALTER M. PHILLIPS, JR., being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, and am in charge of the above captioned case. This affidavit is submitted in opposition to defendant Ricord's motion for suppression of all heroin referred to in the indictment.

2. The heroin which Ricord moves to suppress and which the Government intends to offer as evidence, is 95 pounds taken from co-defendant Cesar Bianchi's private airplane in Florida. This plan was observed by agents of the Bureau

*Appendix "E"*
*Motion to Suppress—November 15, 1972*

of Customs as it arrived in this country on October 18, 1970 at Miami, Florida. From the time of its arrival until the heroin was seized the plane was under constant surveillance by Customs agents.

3. It is the Government's position that any hearing on the question of the legality of this seizure should await the trial of this case and the Government's offer of this evidence.

4. First, Ricord's motion raises no factual issue which must be determined prior to trial, since it is wholly unsupported by any affidavit. Absent any factual assertion that an illegal seizure was made, a pre-trial hearing is unwarranted.

5. Secondly, a pre-trial hearing on the question of the legality of the seizure would necessitate bringing witnesses (Customs agents) here from Miami, when these same witnesses will in any event be present to testify at trial. It would therefore be more expedient to consider the question at that time, especially since the Government's factual showing on the issue of the legality of the seizure will be no different from the trial testimony it will offer through these witnesses.

6. Finally, there may be a question as to Ricord's standing to question the legality of the seizure, irrespective of the assertion in the Government's Bill of Particulars that the heroin was in fact Ricord's. Thus if it appears that Ricord does not have a sufficient proprietary interest to contest the seizure, a hearing on its legality would be unnecessary.

WHEREFORE, your deponent prays that defendant Ricord's motion for a pre-trial hearing to suppress evidence be denied.

WALTER M. PHILLIPS, JR.,
*Assistant United States Attorney*

Sworn to before me this
20 day of November, 1972.
WALTER G. BRANNON.

## APPENDIX "G"

## Decision on Motion to Suppress, February 29, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 72 Cr. 1105

UNITED STATES OF AMERICA,

*—against—*

AUGUSTE JOSEPH RICORD,
a/k/a ANDRE RICORD,
a/k/a MONSIEUR ANDRE,

*Defendant.*

CANNELLA, *J.*

Defendant's motion to suppress, made pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure, is denied.

The court finds that on or about September 18, 1970, an anonymous communication was received by the F.B.I. and subsequently forwarded to the U.S. Bureau of Customs.[1] Various customs agents then proceeded to investigate the facts contained in that communication. The F.A.A. was queried about certain planes mentioned in the communication. One plane, a foreign registered Cessna 210 LVHDW was recorded as landing at Miami International Airport in early October, 1970. The Customs agents assisted by agents of the Bureau of Narcotics and Dangerous Drugs made further investigations at the Miami airport.

[1] See Petitioner's Exhibit 1.

*Appendix "G"*
*Decision on Motion to Suppress, February 29, 1973*

On October 18, 1970, the Cessna 210 aircraft in question was report as leaving Kingston, Jamaica with its destination Miami International Airport. The plane was observed to land and the pilot and co-pilot, Cesar Bianchi and Renato Balestra, posittioned the plane in front of the General Aviation Center Building (GAC) and then reported to the Customs checkpoint in the GAC building. They carried with them two suitcases. Subsequently, they returned to the plane and taxied to a parking area about 100 yards away. They left the airport in a car and, after making various stops in Miami, they were last seen by Agent Hopkins proceeding in a southerly direction.

On October 19, 1970 the Cessna 210 flown by Bianchi and Balestra, left Miami International Airport and proceeded to North Perry Airport, about 30 miles away in Miramar, Florida. Instead of proceeding directly to North Perry the plane took an evasive route westerly over the Everglades, then returned eastward and finally went north. After the plane landed at North Perry, Bianchi and Balestra entered a car and proceeded once again to use evasive tactics.

The court finds that at the time in question, Customs did not as a practice search small planes. Such planes were only searched if they declared cargo or if a particular agent was interested in a particular plane.

While the plane was parked at Miami International on October 18, a quarantine inspector from the Department of Agriculture approached the plane, opened the door and looked in. He made no search or seizure. On October 19, at approximately 7:00 p.m. when the plane was at North Perry, it was searched by Customs Agent Hopkins. He

examined the back seat and removed an auxiliary gas tank and an access panel. Agent Hopkins removed a suitcase from the compartment and slit the bottom portion of the suitcase with a knife and pulled out a plastic bag containing a white powdery substance. This substance was tested with a Marquis Reagent and reacted positive, indicating the presence of an opium derivative. Eventually, on the next day, three suitcases were removed by the agents from the rear compartment of the plane.

The defendant seeks to suppress this material urging that no search or arrest warrant issued to the agents at any time during the incident.

At the outset, the court finds that the defendant lacks standing to challenge the validity of the search. "In order to qualify as a 'person aggrieved by an unlawful search and seizure' one must have been a victim of a search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else. Rule 41(e) applies the general principle that a party will not be heard to claim a constitutional protection unless he "belongs to the class for whose sake the constitutional protection is given'. Hatch v. Reardon, 204 U.S. 152, 160. The restrictions upon searches and seizures were obviously designed for protection against official invasion of privacy and the security of property". Jones v. United States, 362 U.S. 257, 261 (1960). See also Wong Sun v. United States, 371 U.S. 471 (1963). In this case, there was clearly no search or seizure from the defendant himself; the property in question was at most

in the construction possession of Bianchi and Balestra and the right to object redounds to them.[2]

In any event, the court finds the search to be legal and valid in all respects. It was conducted with probable cause and was not unreasonable. From the totatlity of the knowledge possessed by the Customs agents and others, there was sufficient probable cause to conduct the search. It was reasonable for them to assume that the aircraft was smuggling narcotics into the United States. The court is not pursuaded that a search warrant should have been obtained even though there is evidence that the plane was parked and its wheels chocked with lines attached.[3] We are not concerned here with the search of a house or eevn a motor vehicle, but with a speedy, not readily pursuable light aircraft that could with ease take off and disappear possibly to Cuba or some other Caribbean island.

Furthermore, the court concludes that the agents conducted a vaild border search. While border searches are restricted by the requirement that they be reasonable, mere suspicion that a person is carrying merchandise unlawfully imported into the United States is sufficient. 19 U.S.C. § 482. Border searches are in a category distinct from other searches and seizures, and neither a search warrant nor probable cause is required. Walker v. United States,

---

[2] The Government has evidently alleged that the defendant was in fact the owner of the property seized. Defendant urges that this propriety interest in the property seized is sufficient to confer standing. The court is not persuaded that this factor by itself necessarily confers standing. Nonetheless, the court proceeded to conduct a full evidentiary hearing.

[3] Although the aircraft was secured in this fashion, it could easily have been freed in a matter of seconds. See Hearing Minutes, p. 60.

*Appendix "G"*
*Decision on Motion to Suppress, February 29, 1973*

404 F.2d 900, 902 (5th Cir. 1968); Rodriguez-Gonzalez v. United States, 378 F.2d 256, 258 (9th Cir. 1967). See also, United States v. Glaziou, 402 F.2d 8 (2d Cir. 1968), cert. denied, 393 U.S. 1121 (1969). Under all the circumstances of this case, including the constant surveillance of the aircraft by the agents, there was certainly reasonable cause to suspect that merchandise was being imported contrary to law.

In view of the foregoing, defendant's motion to suppress is denied.[4]

So ordered.

Dated: New York, N.Y.
January 29, 1973

s/JOHN M. CANNELLA
*U.S.D.J.*

[4] At the conclusion of the hearing, the court denied the defendant's motion and indicated that it would file a memorandum setting forth its findings of fact and conclusions of law. Thereafter, the defendant's motion was renewed during the course of the trial and denied. After hearing all the evidence disclosed at the hearing and trial, the court is convinced that the search was legal in all respects.

# APPENDIX "H"

## Notice of Hearing on Petition for Writ of Mandamus

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

72 Cr. 1105

In Matter of the Petition of

AUGUSTE JOSEPH RICORD

For a Writ of Mandamus Directed to The Honorable John M. Cannella, United States District Judge, Southern District of New York.

SIRS:

PLEASE TAKE NOTICE that the annexed petition of Auguste Joseph Ricord, verified by the undersigned, Herbert I. Handman, as attorney, on November 29, 1972, for a Writ of Mandamus will come on to be heard at a Term of this Court to be held at the United States Courthouse, Foley Square, New York, New York, on the 4th day of December 1972, at 10:30 A.M., in the forenoon of that day, or as soon thereafter as counsel can be heard, at which time Petitioner will seek the relief requested in said Petition, and such other and further relief as to the Court may seem just and proper.

*Appendix "H"*
*Notice of Hearing on Petition for Writ of Mandamus*

**Dated: November 29, 1972.**

**Yours, etc.,**

**HERBERT I. HANDMAN**
**Attorney for Defendant**
**Auguste Joseph Ricord**
**36 West 44th Street**
**New York, New York 10036**
**Tel. YUkon 6-5460 (212)**

**To:**

**HON. JOHN M. CANNELLA**
**United States District Judge**
**For the Southern District of New York**
**United States Courthouse**
**Foley Square, New York, New York**

**HON. WHITNEY NORTH SEYMOUR, JR.**
**United States Attorney**
**For the Southern District of New York**
**United States Courthouse**
**Foley Square, New York, New York**

## Petition for a Writ of Mandamus

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

72 Cr. 1105

In Matter of the Petition of

AUGUSTE JOSEPH RICORD

For a Writ of Mandamus Directed to The Honorable John M. Cannella, United States District Judge, Southern District of New York.

*To the Honorable Judges of the United States Court of Appeals for the Second Circuit:*

Petitioner, Auguste Joseph Ricord, respectfuly petitions the Honorable Judges of the United States Court of Appeals for the Second Circuit to issue a Writ of Mandamus directing the Honorable John M. Cannella, United States District Judge, Southern District of New York,

1. To vacate his orders and decisions insofar as they denied Petitioner's Motions for

   A. An evidentiary hearing as to the isues of fact and circumstances whereby Petitioner's body was brought into the jurisdiction of the United States and before the said Court.

   B. An evidentiary hearing as to the issues of fact and circumstances concerning the seizure of various alleged narcotics alleged by the United States to be the property of Petitioner.

C. Granting an adjournment of the Trial of the Petitioner for a reasonable period of time to enable attorney for the Petitioner to properly prepare the defense and be in a position to render effective assistance of counsel.

D. Hon. John M. Cannella to disqualify himself to proceed in the prosecution of the criminal proceedings any further.

2. To Grant such Motions on reasonable conditions, as to A-C in No. 1, above and as to D, if granted, cease to participate in the case.

1. Petitioner is named as a Defendant in indictment, Index No. 72 Cr. 1105, which was returned October 2, 1972 and contains one Count of Conspiracy to Violate the old "Harrison Act", Title 21, Secs. 173 and 174, which law has now been superseded by the new Drug Control Act which became effective May 1, 1971. This indictment superseded two previous Indictments, one of which was the one used as the basis for the alleged extradition of the Petitioner. The Trial of the new Indictment is scheduled to begin December 4, 1972 and between the date of this Petition and the Trial Date Depositions are being taken in Paraguay of prospective defense witnesses.

2. The Petitioner asserts that the extradition of his person to the United States and the prosecution of this case have received world wide attention already and will continue to receive an incredible amount of publicity.

The principal reason for news interest in this case is that the physical presence of the Petitioner here within the United States and within this District was secured by flagrant disregard for all the rules and precedents of International Law, comity between sovereign nations, the Treaties with respect to Extradition involved and ordinary decency and civilized conduct.

3. Petitioner moved to dismiss the proceedings due to lack of jurisdiction over his person and requested the opportunity to present the facts so as to have before the District Court and the appellate courts in the event of appeals, the factual background of the means and methods by which Petitioner's presence in this jurisdiction was secured. This opportunity was summarily denied by Judge Cannella.

4. The United States has established certain principles and rules of law for the purpose of deterring illegal and unconscionable activities on the part of its prosecutorial agencies. The "exclusionary rule" is but one example. There are others and there is above all the supervisory power of the Court of Appeals and the Supreme Court to see that justice is administered in accordance with the principles of American due process. It is difficult to believe that the United States Courts will condone, or approve the acquisition of jurisdiction of the person physically by kidnapping or "shanghaing" in order to prosecute him criminally. However unfortunate it may be for Petitioner to be a sort of test case of such procedure and its legality, let alone morality", at least the right to present all the relevant facts and circumstances relating to the so called "extradition" to the court should not be denied to him. The Petitioner asserted in the District Court his right to and the necessity of an evidentiary hearing with respect to the facts. This was denied. In the ordinary case, such hearings are many times denied on the basis that such a hearing would be nothing but a "fishing expedition". Here in this case, the situation is entirely different. The United States gave out innumerable press releases and other publicity informing the world of the various pressures it had used to secure the cooperation and assistance of the Paraguayan Government, including its judiciary, and certainly with "tongue in cheek", there was a press release that the United States Embassy in Paraguay had even gone so far as

to cancel an Annual Picnic and Party which had become an important event. The United States claims that it extradited the Petitioner from Paraguay; the Petitioner denies that the means and methods used were "extradition" in the true sense of the word. The Petitioner asserts that a hearing on such question should be held in advance of any trial on the facts.

5. The indictment and prosecution in this case assert that Petitioner conspired to bring narcotic substances into the United States and set forth certain quantities which the Government had seized and had in its possession. The government further asserted in its Bill of Particulars that such alleged narcotics were the property of the Petitioner. Petitioner asked for an evidentiary hearing to determine the facts with respect to the alleged seizure and whether such seizure was legal under the laws of the United States and its Constitution. Such a hearing was denied; first on the ground that Petitioner did not have standing and second on the ground that because the alleged narcotics were taken from a co-defendant, the legality of the seizure was not relevant or material to the Petitioner's defense. Reference is made to the Motions on this point and the Minutes which are part of the Appendix to this Petition for the details with respect to this matter and which show that Judge Cannella completely misinterpreted the law with respect to standing to move to suppress and the Petitioner's rights where property alleged to be his is involved. Petitioner asked for a Pre-Trial Evidentiary Hearing. Judge Cannella has said that such a hearing may be held during the Trial. This procedure is not only improper but will be highly prejudicial to the orderly trial of this case and to the rights of the Petitioner to due process and a fair trial. The Pre Trial Hearing should be ordered and held in advance of the Trial in Chief.

*Petition for a Writ of Mandamus*

On November 28, 1972 at the time of the entrance of the Order of Judge Cannella with respect to the taking of Depositions in Paraguay, Petitioner presented a Motion on papers for a reasonable adjournment of the Trial of this case. Such Motion was denied. Reference is made to such papers which are part of the Appendix to this Petition so as to show that by the denial of such adjournment, Judge Cannella has denied Petitioner any possibility of effective assistance of counsel.

7. Petitioner reluctantly now feels that it is necessary in the interest of justice to refer to a matter which is personal to Judge Cannella but in the opinion of Petitioner has had and will continue to have an effect on the proceedings in this case. Judge Cannella has advised that one of the reasons for refusing to grant any delays and for setting the trial down peremptorily for December 4, 1972 is that on December 22, 1972, his Honor is scheduled to enter the hospital for a serious operation affecting his eyes. The Government has indicated that it will call a good amount of witnesses and their direct and cross will certainly consume several days of court work. In addition the defense is planning to call many witnesses and their direct and cross will also consume mny days of court work. With Hon. Judge Cannella's personal time table in the back of his Honor's mind, especially in view of the seriousness of the operation involved, it is too much to expect of any one, even an experienced Trial Judge such as Judge Cannella, that the trial proceedings can be conducted in the atmosphere and under the impartial and careful supervision which Petitioner's trial merits.

8. In addition to requesting a Writ of Mandamus directing Judge Cannella to grant the relief above discussed, Petitioner respectfully asks this Court to review the decision of Judge Cannella, in which he declined to

recuse himself, particularly in the light of his Honor's subsequent actions recounted and referred to above and appearing in the Appendix submitted with this Petition. There has been a continuous record of passing upon motions without regard to the papers submitted and without regard to Memoranda as to the law applicable to the situation. It is also clear from the minutes of the various proceedings before Judge Cannella that his Honor has prejudged the matter of extradition and also other matters by virtue of information secured from other proceedings which have been before his Honor but which are not part of the record in this proceeding. It would appear that there have been innumerable conferences at which Judge Cannella was present at which factual matters involved in the present proceedings were involved and discussed but at which Petitioner was not present or represented. It is also obvious from the record in this case that Judge Cannella is disposed to try this case at all costs. It is also obvious from various other narcotic proceedings in which Judge Cannella has been involved that his Honor feels so strongly about the narcotic problem that on more than one occasion these feelings have been expressed to juries who were to deliberate on the guilt or innocence of defendants, when in fact these feelings of Judge Cannella, however correct or justified, are of questionable relevance or propriety in any particular case. The reluctance of any Judge to recuse himself is too well known to dwell upon and the greater reluctance of this Court to interfere is also well known. The Court is respectfully requested to consider the whole matter in the light of the world-wide interest in this case and all the special circumstances involved.

9. Because of the importance of this Petition and for the convenience of the Court, Petitioner has attached hereto a Schedule of certain of the important proceedings before

Judge Cannella. While they are voluminous, Petitioner knew of no other way to get the matter before this Court and to look at them now is much easier than later in a full record on appeal from a long and complicated trial.

WHEREFORE, the Honorable Judges of the United States Court of Appeals for the Second Circuit are respectfully requested to grant the relief requested in this Petition and issue a Writ of Mandamus directed to Hon. Judge Cannella; or, in the alternative, should the requested relief be denied by this Court, Petitioner respectfully requests that all proceedings below be stayed for sufficient time to permit him to prepare and file an appropriate petition with the United States Supreme Court.
Dated: November 29, 1972

AUGUSTE JOSEPH RICORD,
*Petitioner.*

By HERBERT I. HANDMAN
*Attorney*

State of New York )
County of New York) ss.:

Herbert I. Handman, being duly sworn, says that he is the attorney for the petitioner above named, that he had read the foregoing petition, and it is true of his own knowledge, except as to matters stated on information and belief, and that as to those matters he believes it to be true; this verification is made by affiant because the Petitioner does not read or write English.

HERBERT I. HANDMAN

Sworn to before me this 29th
day of November, 1972.

## APPENDIX "I"

## Application for Adjournment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 72 Cr. 1105

UNITED STATES OF AMERICA,

—v.—

AUGUSTE JOSEPH RICORD,
a/k/a ANDRE RICORD, *et al.*,

*Defendants.*

State of New York
County of New York ss.:

HERBERT I. HANDMAN, being duly sworn deposes and says:

That he is an attorney duly admitted to practice in this Court and is the attorney for the defendant Auguste Ricord herein.

That he is a single practitioner with his office at the Bar Building, City and State of New York for over ten years.

That all of the following factors, among others, have made the preparation of the defense of this case both exceedingly difficult and most unusual:

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1. Defendant speaks no English.

2. Defendant is in maximum segregation in prison.

3. Defendant has no family or friends in this country.

4. Defendant is not in good health and was hospitalized by the Government for several days.

5. All overt acts alleged and ascribed to this defendant occurred about 10,000 miles from this jurisdiction and place of trial.

6. Many of the overt acts alleged to other conspirators occurred both in foreign jurisdictions and on other States.

7. Almost all of the potential witnesses speak no English and their languages are French, Spanish or Portuguese.

8. There are extremely novel questions of law presented.

9. All possible defense witnesses reside in at least two foreign countries.

That this indictment was returned on *October 2, 1972, less than two months ago,* and there are numerous prior indictments and cases yet to be heard or tried in this Court, the average case, on information and belief, taking over five months before trial.

That defendant is and most likely will continue to be incarcerated pending the trial and so the Government cannot be prejudiced in this respect.

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That defendant's attorney has so far been forced by direction of the Court to proceed in so hasty a manner as to be unable to attend to other trial and appellate matters long pending in this and other Courts, all of many months longer duration than this instant case. nI fact such a course has necessarily forced a sharp curtailment in handling other legal matters and should this Court follow such a practice regularly it would probably froce the majority of criminal lawyers in this jurisdiction out of business since they are single practitioners.

That the efforts of deponent to date in this case are set forth in Part II of the schedule annexed hereto, which however does not reflect Court dates, conferences and visits with the defendant at the Federal Detention Center, all of which have been voluminous.

That in the records of this case are sworn statements of assistant United States Attorneys and other Government agents to the effect that with respect to potential witnesses in this case the assistant "discussed [witnesses] position with him, with his wife, with his sister, and with his two attorneys . . . on numerous occasions . . . explained and re-explained in great detail." The Government has had the opportunity to assemble and develop its case through scores of meetings over a period of two years.

That deponent's few days in Paraguay were only enough to scratch the surface of witnesses already known to the defendant and over eleven people had to be found and interviewed for the very first and last time in a foreign country with a very short work day in less than three days. Had deponent stayed longer, the other matters to be done indicated in the schedule annexed, part II, would not have been possible.

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That there must still be done prior to the trial herein, the following at last: investigation of the Government's possible witnesses, investigation of airplane flights alleged, scientific examination of the alleged narcotics, securing of certain physical evidence in Paraguay, obtaining depositions from known and unknown witnesses, issuance of subpoenas and preparation of trial memorandums of law.

That deponent conservatively estimates that the total *man hours actually spent* on preparation of this case by the Government bears at least a ten to one ratio to the *total number of business hours available* to the defense since the current indictments, assuming defense counsel worked exclusively on this case.

That the current date set for the trial of this case does not permit the scales of justice to be fairly balanced by each side. Deponent requires at the very least some months from the date the currently pending depositions are completed, translated and transcribed for proper preparation of this case. It would be more than a simple failure of justice to force this defendant to defend at trial after all that the various Government agencies, U.S. customs, BNDD, State Department, CIA, etc., have done over two full years, without time to plan, complete and evaluate the basic legal procedures to which he is entitled by statute.

WHEREFORE, it is respectfully requested that this case be adjourned for all purposes for at least three months from the date of the completion of the scheduled depositions.

.....
HERBERT I. HANDMAN

Sworn to before me this day of November, 1972.

*Appendix "I"*
*Application for Adjournment*

UNITED STATES OF AMERICA

vs.

AUGUSTE RICORD

SCHEDULE OF PROCEEDINGS HAD

I. UNITED STATES ATTORNEY'S OFFICE

A. Investigation of this case was initiated prior to September of 1970.

B. Involved in the investigation and development of the case were,

1. U.S. Attorney's office—New York
2. U.S. Attorney's office—Washington
3. B.N.D.D.
4. U.S. Customs
5. U.S. Foreign Service
6. CIA

C. After the defendant's extradition he first secured counsel in the United States on September 11, 1972; after which the United States Attorney's office did the following:

1. Moved to join the case for trial with another indictment on September 15, 1972.

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2. Procured a new superseding indictment on October 3, 1972 (the indictment herein).

3. Furnished a purported Bill of Particulars dated October 17, 1972.

4. Thereafter furnished a purported amended Bill of Particulars dated October 27, 1972, adding significant allegations.

5. Amended the latter Bill on October 31, 1972 and again on November 6, 1972.

II. THE DEFENDANT'S ATTORNEY

A. Met defendant for the first time on *September 11, 1972.*

B. Had to make copies of available Court proceedings and translate portions of them which were in French and Spanish. (*To this date the Court file does not contain many of the prior proceedings,* and despite several requests in open Court, deponent has not yet received these documents.)

C. Made a motion to recuse dated September 13, 1972.

D. Secured an order for a medical examination of defendant dated September 20, 1972.

E. Made motions toward the initial indictment dated September 27, 1972.

F. Attended at medical examinations of defendant twice.

G. Submitted an order requesting dismissal of the original indictment.

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H. Submitted a memorandum regarding jurisdiction dated October 17, 1972.

I. Made Preliminary Motions (thirty pages) under sixteen categories on October 13, 1972.

J. Submitted a thirty-four page memorandum regarding the Particulars and Discovery.

K. Submitted an additional memorandum on discovery dated October 30, 1972.

L. Made a motion for suppression of evidence dated November 15, 1972.

M. Met with the AUSA to discuss the Particulars and receive certain evidence.

N. Travelled to Paraguay to investigate the charges from November 18, 1972 until November 23, 1972.

O. Made a motion to take depositions of witnesses on November 27, 1972.

## APPENDIX "J"

*Treaty between the United States and Paraguay for the mutual extradition of fugitives from justice. Signed at Asuncion, March 26, 1913; ratification advised by the Senate, June 5, 1913; ratified by the President, October 16, 1913; ratified by Paraguay, July 16, 1913; ratifications exchanged at Asuncion, January 17, 1914; proclaimed, January 24, 1914.*

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.
A PROCLAMATION.

Whereas a Treaty between the United States of America and the Republic of Paraguay for the mutual extradition of fugitives from justice was concluded and signed by their respective Plenipotentiaries at the City of Asuncion, on the twenty-sixth day of March, one thousand nine hundred and thirteen, the original of which Treaty, being in the English and Spanish languages is word for word as follows:

*Extradition Treaty between the United States of America and the Republic of Paraguay.*

The United States of America and the Republic of Paraguay, desiring to strengthen their friendly relations and to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice, between the United States of America and the Republic of Paraguay, and have appointed for that purpose the following Plenipotentiaries:

The President of the United States of America, Nicolay A. Grevstad, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to the Republic of Paraguay; and

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**The President of Paraguay, Doctor Eusebio Ayala, Minister for Foreign Affairs of The Republic of Paraguay;**

**Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:**

## ARTICLE I.

**It is agreed that the Government of the United States and the Government of Paraguay shall, upon mutual requisition duly made as herein provided, deliver up to justice any person who may be charged with, or may have been convicted of any of the crimes specified in Article II of this Convention committed within the jurisdiction of one of the Contracting Parties while said person was actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other, provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.**

## ARTICLE II

Persons shall be delivered up according to the provisions of this Convention, *who shall have been charged with or convicted of any of the following crimes*:

1. Murder, comprehending the crimes designated by the terms parricide, assassination, manslaughter, when voluntary; poisoning or infanticide.

2. The attempt to commit murder.

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3. Rape, abortion, carnal knowledge of children under the age of twelve years.

4. Bigamy.

5. Arson.

6. Wilful and unlawful destruction or obstruction of railroads, which endangers human life.

7. Crimes committed at sea:

*a*) Piracy, as commonly known and defined by the law of nations, or by statute;

*b*) Wrongfully sinking or destroying a vessel at sea or attempting to do so;

*c*) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the Captain or Commander of such vessel, or by fraud or violence taking possession of such vessel;

*d*) Assault on board ship upon the high seas with intent to do bodily harm.

8. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein.

9. The act of breaking into and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance companies, or other buildings not dwellings with intent to commit a felony therein.

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10. Robbery, defined to be the act of feloniously and forcibly taking from the person of another goods or money by violence or by putting him in fear.

11. Forgery or the utterance of forged papers.

12. The forgery or falsification of the official acts of the Government or public authority, including Courts of Justice, or the uttering or fraudulent use of any of the same.

13. The fabrication of counterfeit money, whether coin of paper, counterfeit titles or coupons of public debt, created by National, State, Provincial, Territorial, Local or Municipal Governments, bank notes or other instruments of public credit, counterfeit seals, stamps dies and marks of State or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects.

14. Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds two hundred dollars or Paraguayan equivalent.

15. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offence is punishable by imprisonment or other corporal punishment by the laws of both countries, and where the amount embezzled exceeds two hundred dollars or Paraguayan equivalent.

16. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or their families, or for any other unlawful end.

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*Extradition Treaty—Paraguay*

17. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more, or Paraguayan equivalent.

18. Obtaining money, valuable securities or other property by false pretences or receiving securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds two hundred dollars or Paraguayan equivalent.

19. Perjury or subornation of perjury.

20. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, director or officer of any Company or Corporation, or by any one in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds two hundred dollars or Paraguayan equivalent.

21. Crimes and offences against the laws of both countries for the suppression of slavery and slave trading.

22. The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by imprisonment by the laws of both Contracting Parties.

ARTICLE III.

The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with such crimes or offences; and no person surrendered by or to either of the Contracting Parties in virtue of this Convention shall be tried or

punished for a political crime or offence. When the offence charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offence was committed or attempted against the life of the Sovereign or Head of a foreign State or against the life of any member of his family, shall not be deemed sufficient to sustain that such crime or offence was of a political character; or was an act connected with crimes or offences of a political character.

ARTICLE IV.

No person shall be tried for any crime or offence other than that for which he was surrendered.

ARTICLE V.

A fugitive criminal shall not be surrendered under the provisions hereof, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offence for which the surrender is asked.

ARTICLE VI.

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offence committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and until he shall have been set at liberty in due course of law.

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ARTICLE VII.

If a fugitive criminal claimed by one of the parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that State whose demand is first received.

ARTICLE VIII.

Under the stipulations of this Convention, neither of the Contracting Parties shall be bound to deliver up its own citizens.

ARTICLE IX.

The expense of arrest, detention, examination and transportation of the accused shall be paid by the Government which has preferred the demand for extradition.

ARTICLE X.

Everything found in the possession of the fugitive criminal at the time of his arrest, whether being the proceeds of the crime or offence, or which may be material as evidence in making proof of the crime, shall so far as practicable, according to the laws of either of the Contracting Parties, be delivered up with his person at the time of surrender. Nevertheless, the rights of a third party with regard to the articles aforesaid, shall be duly respected.

ARTICLE XI.

The stipulations of this Convention shall be applicable to all territory wherever situated, belonging to either of

the Contracting Parties or in the occupancy and under the control of either of them, during such occupancy or control.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the Contracting Parties. In the event of the absence of such agents from the country or its seat of Government, or where extradition is sought from a colonial possession of Paraguay or from territory included in the preceding paragraphs, other than the United States, requisitions may be made by superior Consular officers. It shall be competent for such diplomatic or superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two Governments shall respectively have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the Court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

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## ARTICLE XII.

If when a person accused shall have been arrested in virtue of the mandate or preliminary warrant of arrest, issued by the competent authority as provided in Article XI hereof, and been brought before a judge or magistrate to the end that the evidence of his or her guilt may be heard and examined as hereinbefore provided, it shall appear that the mandate or preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegraph from the Government asking for the extradition, it shall be competent for the judge or magistrate at his discretion to hold the accused for a period not exceeding two months, so that the demanding Government may have opportunity to lay before such judge or magistrate legal evidence of the guilt of the accused and if at the expiration of said period of two months, such legal evidence shall not have been produced before such judge or magistrate, the person arrested shall be released, provided that the examination of the charges preferred against such accused person shall not be actually going on.

## ARTICLE XIII.

In every case of a request made by either of the two Contracting Parties for the arrest, detention or extradition of fugitive criminals, the legal officers or fiscal Ministry of the country where the proceedings of extradition are had, shall assist the officers of the Government demanding the extradition before the respective judges and magistrates, by every legal means within their or its power; and no claim whatever for compensation for any of the services so rendered shall be made against the Government demanding the extradition, provided, however, that any officer or offi-

cers of the surrendering Government so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the Government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

## ARTICLE XIV.

This Convention shall take effect from the day of the exchange of the ratifications thereof; but either Contracting Party may at any time terminate the same on giving to the other six months notice of its intention to do so.

The ratifications of the present treaty shall be exchanged in the city of Asunción as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed this treaty and have affixed thereto their respective seals.

Done at Asunción this twenty-sixth day of March, in the year of our Lord one thousand nine hundred and thirteen.

NICOLAY A. GREVSTAD [SEAL.]

EUSEBIO AYALA. [SEAL.]

And whereas the said Treaty has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Asunción, on the seventeenth day of January, one thousand nine hundred and fourteen;

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Now, therefore, be it known that I, Woodrow Wilson, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-fourth day of January in the year of our Lord one thousand
[SEAL.] nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

WOODROW WILSON

By the President:

W. J. BRYAN
*Secretary of State.*